

DEVIN IAMS, )  
 )  
 ) Petitioner, ) Case No. C11-0757-MJP-BAT  
 )  
 v. ) **REPORT AND**  
 ) **RECOMMENDATION**  
 )  
 YAKIMA COUNTY JAIL, )  
 )  
 ) Respondent. )  
 )

## I. DISCUSSION

## REPORT AND RECOMMENDATION- 1

1 1.) He seeks to have his revocation overturned, to be permitted the medical use of marijuana,  
2 and to have Department of Corrections' policies regarding medical marijuana changed. (*Id.* at  
3 10.) Petitioner notes that although he challenged the revocation through the jail's administrative  
4 procedures, he never sought relief from the state-court system. (*Id.* at 2–9.) He also does not  
5 specify what constitutional right respondent has violated.

6 The Court finds that the habeas petition should be dismissed without prejudice. First,  
7 petitioner has failed to plead facts to suggest that he exhausted state-court remedies by either  
8 (1) fairly presenting each federal claim to the highest state court with jurisdiction to consider it,  
9 or (2) showing that no state remedy is available. *Johnson v. Zenon*, 88 F.3d 828, 829 (9th Cir.  
10 1996); *see* 28 U.S.C. § 2254(b); *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) (“[S]tate  
11 prisoners must give the state courts one full opportunity to resolve any constitutional issues by  
12 invoking one complete round of the State's established appellate review process.”). Second,  
13 petitioner has failed to prosecute this matter by declining to respond to the Clerk's letter  
14 directing him to pay the filing fee or to submit an IFP application. (*See* Dkt. 2.) Petitioner  
15 should be denied the issuance of a certificate of appealability because no reasonable jurist would  
16 disagree with the Court's legal conclusions to dismiss without prejudice under these  
17 circumstances.

## 18 II. CONCLUSION

19 The Court recommends **DISMISSING** the 28 U.S.C. § 2254 petition without prejudice for  
20 failure to exhaust state-court remedies and for failure to prosecute. The Court also recommends  
21 **DENYING** issuance of a certificate of appealability. A proposed order accompanies this Report

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1 and Recommendation.

2 DATED this 27th day of June, 2011.

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5 BRIAN A. TSUCHIDA  
6 United States Magistrate Judge  
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